

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sotelo Car Care, Inc.,

Complainant,

vs.

Nextel of California, Inc.

Defendant.

(ECP)

Case 04-10-027

(Filed October 20, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING CONTINUANCE**

Complainant alleges that it has a contract with Nextel of California, Inc., signed in 1997, which provides for a \$99 a month rate plan for each of two cellular phones, and which has no expiration date. Complainant alleges that defendant, without complainant's consent, changed the rate plan to a more expensive plan. Complainant seeks enforcement of its 1997 contract which it believes provides unlimited incoming and outgoing calls at \$99 per month for each of its two cellular phones. Complainant seeks a refund for overpayment. Defendant denies the allegations.

Public hearing was set for February 18, 2005 in Los Angeles at which time defendant appeared ready for hearing. At the hearing I received a message from the Commission's Calendar Clerk stating that Mrs. Sotelo called at 9:35 a.m. requesting a continuance because her mother died the previous night.

Defendant's witness had come from New Jersey to attend the hearing and objected to a continuance. I decided, pursuant to CCP § 596 to postpone the hearing but take the testimony of the witness. The witness introduced Exhibit 1, a history of complainant and defendant's business relationship. Briefly, that exhibit and the witnesses' testimony showed that between August 14, 1997, when complainant entered into an agreement with defendant, and the date of the hearing, there had been at least nine changes in the terms of the agreement between the parties. The witness testified that all of these changes were with the consent of the complainant.

I have read the complaint and the defendant's Exhibit 1, and am prepared to make my recommendation on disposition to the Commission based on the proceedings to date. If complainant desires to present evidence, I will reset a hearing but will not require the attendance of defendant. Defendant's testimony is received. Complainant shall inform me in writing by June 10, 2005 if it desires a hearing, otherwise the case will be submitted on the proceedings to date.

Dated May 17, 2005, at San Francisco, California.

/s/ Robert Barnett

Robert Barnett
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Administrative Law Judge's Ruling Regarding Continuance by using the following service:

☐ E-Mail Service: sending the entire document as an attachment to all known parties of record who have provided electronic mail addresses.

☒ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated May 17, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.